

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None
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Person To Contact:

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Date:

January 25, 2010

Legend

Taxpayer =

Newco =

X =

Y =

State =

Year =

Dear :

This letter responds to your July 20, 2009 request for rulings concerning the federal income tax consequences of a proposed transaction. The information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in

support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Current Structure

Taxpayer is a non-stock corporation organized in Year under the non-profit statute of State. For federal tax purposes, Taxpayer has never been exempt from taxation under § 501 of the Internal Revenue Code; it files Form 1120 consistent with its status as a Subchapter C corporation. Taxpayer operates x facilities in State for its members and the general public on a limited basis.

Under State law, Taxpayer is prohibited from issuing any form of stock. Instead, Taxpayer has a two-tier membership structure. First-tier members pay higher fees for the right to vote and to use the facilities. Members in the second tier pay a reduced fee to use the facilities but do not have voting rights.

Taxpayer is engaged in a capital expansion project. Taxpayer's Board of Directors formed a special committee ("committee") to explore various financing alternatives to fund the project. For what are represented to be substantial non-tax reasons, the committee concluded that the following transaction was the optimal financing arrangement to accomplish Taxpayer's business objectives.

Proposed Transaction

To fund the capital expansion project, Taxpayer proposes entering into the following transaction:

1. Taxpayer will form Newco, a State stock corporation, whose sole business activity is to facilitate financing Taxpayer's capital expansion project;
2. Taxpayer will contribute a nominal amount of cash to Newco in exchange for all of its common stock;
3. After formation, Newco will issue up to y shares of preferred stock ("Preferred Stock") similar to that described in §1504(a)(4), to a limited number of subscribing Voting and Non-Voting members;
4. Upon receipt, Newco immediately will distribute to Taxpayer all, or substantially all, of the net proceeds from the Preferred Stock issuance, retaining only a nominal amount of cash; and
5. Taxpayer will provide Newco's preferred shareholders an unsecured, unconditional guarantee, which will be subordinated to Taxpayer's obligations to its other creditors.

Representation

Taxpayer represents that the stock charter of the Preferred Stock shall clearly state that for federal income tax purposes, the Preferred Stock shall be treated at all times as if it were issued by Taxpayer (and not Newco) with all attendant and resulting federal income tax consequences that may follow from such treatment. Taxpayer further represents that a similar legend will be included on each Preferred Stock certificate issued by Newco.

Rulings

Based solely on the information submitted and representations made, we rule as follows:

- (1) For all federal income tax purposes, Taxpayer, not Newco, will be treated as the issuer of the Preferred Stock.
- (2) Taxpayer and Newco may be members of an affiliated group for purposes of §1504.

Caveat

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied about whether the preferred stock and the guarantee together constitute debt or equity.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely yours,

Alison G. Burns
Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)